relied on by the plaintiff was that of *Erlanger* v. *New Sombrero Phosphate Co.*, L. R. 3 App. Cas. 1218, but the court in the principal case differentiates that case on the ground of a difference in the facts. In that case the promoters became the incorporators of the corporation, but made the sale before complete organization, and then sold to the public. Plaintiff also relied upon the Massachusetts case of *Old Dominion Copper Mining & Smelting Co.* v. *Bigelow,* 188 Mass. 315, 108 Am. St. 479, 74 N. E. 653, holding, on the same state of facts as in the principal case, that a promoter stands in a fiduciary relation to a corporation formed by his promotion, and if he buys property personally with a view to selling it to the corporation, and sells it to the corporation at an advance, he is bound to disclose all material facts relating to the property, or to see that the corporation has adequate independent advice; the knowledge of defendant and Lewisohn was not equivalent to a disclosure to plaintiff corporation. The court in the principal case declined to follow this latter decision.

DISCOVERY—PERSONAL INJURIES—POWER OF COURT TO COMPEL PHYSICAL EXAMINATION OF PLAINTIFF.—Where the plaintiff sued for personal injuries alleged to have been sustained through the negligence of the defendant, *held,* that the court has no power, in the absence of statute, to compel the plaintiff to submit to a physical examination by a physician before trial. *Larson* v. *Salt Lake City* (1908), — Utah —, 97 Pac. 483.

The case is one of first impression in Utah, and the decision places the court squarely among the minority of the state courts in which the question has been adjudicated. Massachusetts, Illinois and Texas support the view taken in the principal case. The opposite doctrine obtains in Alabama, Arkansas, Georgia, Iowa, Minnesota, Missouri, Ohio, Pennsylvania, Washington, Wisconsin, Indiana, Kansas, Michigan and North Dakota. See for full discussion of the question: 1 MICH. L. REV., pp. 193, 277, 669; 2 Id., pp. 321, 47; 3 Id., p. 160; 14 CYC. 364, 5 CUR. LAW 1022 The federal courts are with the minority. *Union Pac. Ry. Co.* v. *Botsford,* 141 U. S. 250; *Ill. Cent. Ry. Co.* v. *Griffin,* 80 Fed. 278. The courts which uphold the right of the court to compel examination take the position that since the plaintiff has the right to offer the testimony of friendly physicians upon trial, to deny the defendant an equal opportunity is a manifest injustice. *Schroeder* v. *C. R. I. & P. R. R. Co.,* 47 Ia. 375. The court in the principal case says: "To say that the action of the courts may be invoked whenever the exercise of a power will promote justice, is to say that courts are self constituting and their power self created." And, while recognizing the injustice that may result from the inability of the court to execute such an order, the decision is based upon the ground that its enforcement would be a direct usurpation of legislative function. Statutes granting the right in question have been held constitutional. *McGovern* v. *Hope,* 63 N. J. L. 76; *Lyon* v. *Manhattan Ry. Co.,* 142 N. Y. 298, 25 L. R. A. 402.